IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.130 OF 2007
IN
NOTICE OF MOTION NO.2480 OF 2005
IN
L.C.SUIT NO.2698 OF 2005
WITH
CIVIL APPLICATION NO.195 OF 2007

The Municipal Corporation of
Gr.Bombay ...Appellants

Versus

Mr.Shrinivas Arumuggam Pillai
& Anr. ...Respondents

.....

Mrs.Geeta Joglekar for Appellants.

Mrs.Nilima Sanglikar for Respondents.

.....

CORAM: A.M.KHANWILKAR, J.

FEBRUARY 22, 2007.

P.C.

1. Heard Counsel for the parties. Mrs.Sanglikar waives notice for Respondents.

2. As short question is involved, Appeal is taken up for final disposal forthwith by consent.

3. This Appeal from Order takes exception to the Judgment and Order passed by the City Civil Court, Bombay dated 8th December 2005 in Notice of Motion No.2480 of 2005. By the said order, the Trial Court has made the Notice of Motion absolute in terms of prayer clause (a), thereby restraining Appellants/Corporation from acting upon the suit notice regarding proposed demolition of the unauthorised structure referred to in the suit notice being extension of rear side of the room being brick masonry wall and A.C. sheet roof. The only reason that has weighed with the Trial Court in making the Notice of Motion absolute is that the suit notice does not mention the area of the whole structure including the alleged unauthorised construction. The Court then proceeded to observe that in absence thereof it was not possible to appreciate the arguments and the case put forth by the Respondents/Plaintiffs.

4. This view has been criticised by the Appellants before this Court on two counts. The first argument is that neither Section 351 of the

Mumbai Municipal Corporation Act nor any other provision obligates the Authority to mention the exact area of the structure. It is for the occupant to satisfy the Authority that the structure is authorised structure and has been constructed after taking proper permission from the competent Authority. Besides, it is argued that the purpose for issuing notice under Section 351 is to call upon the Appellants to explain and furnish satisfactory material to establish that the offending structure is authorised structure. It is not necessary to give the area of the structure. It will be enough if the rough sketch gives the location of the structure and identifies the unauthorised portion therein.

5. In the present case, this requirement has been complied by giving suit notice under Section 351 of the Act calling upon the Respondents/Plaintiffs to show-cause and furnish sufficient material to establish that the identified structure to be unauthorised is either protected structure as per the extant policy or has been erected after obtaining prior permission of

the competent Authority.

6. Counsel for the Respondents, on the other hand, submits that the structure in question is standing since 1955 and that position is reinforced on the basis of the documentary evidence produced by the Respondents before the Authority as well as filed along with the Plaint before the Trial Court.

7. In my opinion, the question whether the structure is authorised or not, is a matter to be considered in the first place by the appropriate Authority and when the matter is brought before the Court, that aspect will have to be decided by the Trial Court on the basis of material placed before it. In the present case, the Trial Court has merely proceeded to make the Notice of Motion absolute on the reasoning that the area of the whole structure including the alleged unauthorised construction has not been mentioned in the suit notice. That basis is untenable. There is substance in the argument of the Appellants that none of the provisions including Section 351 of the

Mumbai Municipal Corporation Act obligates the Authority to specifically mention the area of the structure as such.

8. As mentioned earlier, the suit notice clearly provides for the location of the structure and has highlighted the unauthorised portion thereof in the Schedule as extension on the rear side of the room with brick masonry wall and A.C. sheet roof. That description was sufficient notice to the Respondents/Plaintiffs to show-cause and satisfy the Authority that the said structure was either protected structure or erected after seeking prior permission. The purpose of giving notice is to give opportunity to the occupant to produce necessary material in relation to the identified structure.

9. Viewed thus, the basis on which the Trial Court proceeded to allow the Notice of Motion, being erroneous, the order in question is set-aside and the matter is relegated to the Trial Court for reconsideration of the Notice of Motion on merits after considering all other relevant documentary

evidence and materials produced by the parties. All questions in that behalf are left open. The Notice of Motion stands restored to the file of the Trial Court, to be listed before the Trial Court on 16th March 2007 at 2.30 p.m. when the parties shall appear before the Trial Court, on which date, it may proceed to decide the Motion finally or on some other date to ensure that the same is finally disposed of before 20th April 2007.

10. Status-quo with regard to the suit property be maintained by the parties till appropriate orders are passed by the Trial Court during the pendency of the Notice of Motion.

11. At this stage, Counsel for the Respondents/Plaintiffs points out that the Plaintiffs have filed Notice of Motion before the Trial Court for undertaking joint measurement of the suit structure which is still pending for consideration. The parties may approach the Trial Court for expeditious disposal of the said Motion. The Trial Court may pass necessary orders if such application is made.

12. Appeal and the companion Civil Application stand disposed of on the above terms.

A.M.KHANWILKAR, J.